

ALCOHOLIC BEVERAGE CONTROL ACT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Alcoholic Beverage Control Act to address various issues related to the regulation of alcoholic products.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and removes references to certificates related to prohibited interests, relationships, and actions;
- ▶ modifies the type of licenses that if held by a manufacturing facility that also holds a package agency allows the manufacturing facility to sell an alcoholic product on additional days;
- ▶ addresses the transfer of a grandfathered facility licensed as an on-premise banquet catering license;
- ▶ modifies bond amount for on-premise beer retailers;
- ▶ modifies the definition of recreational amenity;
- ▶ addresses requirements related to on-premise beer retailers, recreational amenities, and the sale of food;
- ▶ removes an unnecessary cross reference related to notifying the department of closures and transfers of licenses;
- ▶ modifies dates related to grandfathering and beer only restaurants; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

33 **32B-1-102**, as last amended by Laws of Utah 2011, Chapters 307 and 334
34 **32B-2-209**, as enacted by Laws of Utah 2011, Chapter 334
35 **32B-2-605**, as last amended by Laws of Utah 2011, Chapters 307 and 334
36 **32B-6-404**, as last amended by Laws of Utah 2011, Chapter 334
37 **32B-6-603 (Superseded 11/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
38 **32B-6-702**, as last amended by Laws of Utah 2011, Chapter 334
39 **32B-6-703**, as last amended by Laws of Utah 2011, Chapter 334
40 **32B-6-705**, as last amended by Laws of Utah 2011, Chapter 334
41 **32B-6-706**, as last amended by Laws of Utah 2011, Chapters 307 and 334
42 **32B-6-902 (Effective 03/01/12)**, as enacted by Laws of Utah 2011, Chapter 334

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **32B-1-102** is amended to read:

46 **32B-1-102. Definitions.**

47 As used in this title:

48 (1) "Airport lounge" means a business location:

49 (a) at which an alcoholic product is sold at retail for consumption on the premises; and

50 (b) that is located at an international airport with a United States Customs office on the
51 premises of the international airport.

52 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,
53 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

54 (3) "Alcoholic beverage" means the following:

55 (a) beer; or

56 (b) liquor.

57 (4) (a) "Alcoholic product" means a product that:

58 (i) contains at least .5% of alcohol by volume; and

59 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other
60 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol
61 in an amount equal to or greater than .5% of alcohol by volume.

62 (b) "Alcoholic product" includes an alcoholic beverage.

63 (c) "Alcoholic product" does not include any of the following common items that

otherwise come within the definition of an alcoholic product:

(i) except as provided in Subsection (4)(d), an extract;

(ii) vinegar;

(iii) cider;

(iv) essence;

(v) tincture;

(vi) food preparation; or

(vii) an over-the-counter medicine.

(d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.

(5) "Alcohol training and education seminar" means a seminar that is:

(a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

(b) described in Section 62A-15-401.

(6) "Banquet" means an event:

(a) that is held at one or more designated locations approved by the commission in or on the premises of a:

(i) hotel;

(ii) resort facility;

(iii) sports center; or

(iv) convention center;

(b) for which there is a contract:

(i) between a person operating a facility listed in Subsection (6)(a) and another person;

and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

(7) (a) "Bar" means a surface or structure:

(i) at which an alcoholic product is:

(A) stored; or

(B) dispensed; or

(ii) from which an alcoholic product is served.

(b) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:

- (i) stored; or
- (ii) dispensed.

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

- (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and
- (ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

- (i) contains alcohol in the percentages described in Subsection (8)(a); and
- (ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

(10) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(11) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

126 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more
127 retail licensees or off-premise beer retailers.

128 (12) "Billboard" means a public display used to advertise, including:

129 (a) a light device;

130 (b) a painting;

131 (c) a drawing;

132 (d) a poster;

133 (e) a sign;

134 (f) a signboard; or

135 (g) a scoreboard.

136 (13) "Brewer" means a person engaged in manufacturing:

137 (a) beer;

138 (b) heavy beer; or

139 (c) a flavored malt beverage.

140 (14) "Brewery manufacturing license" means a license issued in accordance with
141 Chapter 11, Part 5, Brewery Manufacturing License.

142 (15) "Certificate of approval" means a certificate of approval obtained from the
143 department under Section 32B-11-201.

144 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by
145 a bus company to a group of persons pursuant to a common purpose:

146 (a) under a single contract;

147 (b) at a fixed charge in accordance with the bus company's tariff; and

148 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other
149 motor vehicle, and a driver to travel together to one or more specified destinations.

150 (17) "Church" means a building:

151 (a) set apart for worship;

152 (b) in which religious services are held;

153 (c) with which clergy is associated; and

154 (d) that is tax exempt under the laws of this state.

155 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail
156 License Act, and Chapter 6, Part 4, Club License.

157 (b) "Club license" includes:

158 (i) a dining club license;

159 (ii) an equity club license;

160 (iii) a fraternal club license; or

161 (iv) a social club license.

162 (19) "Commission" means the Alcoholic Beverage Control Commission created in
163 Section 32B-2-201.

164 (20) "Commissioner" means a member of the commission.

165 (21) "Community location" means:

166 (a) a public or private school;

167 (b) a church;

168 (c) a public library;

169 (d) a public playground; or

170 (e) a public park.

171 (22) "Community location governing authority" means:

172 (a) the governing body of the community location; or

173 (b) if the commission does not know who is the governing body of a community
174 location, a person who appears to the commission to have been given on behalf of the
175 community location the authority to prohibit an activity at the community location.

176 (23) "Container" means a receptacle that contains an alcoholic product, including:

177 (a) a bottle;

178 (b) a vessel; or

179 (c) a similar item.

180 (24) "Convention center" means a facility that is:

181 (a) in total at least 30,000 square feet; and

182 (b) otherwise defined as a "convention center" by the commission by rule.

183 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a
184 dining area of a licensed premises where seating is provided to a patron for service of food.

185 (b) "Counter" does not include a surface or structure if on or at any point of the surface
186 or structure an alcoholic product is:

187 (i) stored; or

- 188 (ii) dispensed.
- 189 (26) "Department" means the Department of Alcoholic Beverage Control created in
190 Section 32B-2-203.
- 191 (27) "Department compliance officer" means an individual who is:
- 192 (a) an auditor or inspector; and
- 193 (b) employed by the department.
- 194 (28) "Department sample" means liquor that is placed in the possession of the
195 department for testing, analysis, and sampling.
- 196 (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail
197 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
198 dining club license.
- 199 (30) "Director," unless the context requires otherwise, means the director of the
200 department.
- 201 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this
202 title:
- 203 (a) against a person subject to administrative action; and
- 204 (b) that is brought on the basis of a violation of this title.
- 205 (32) (a) Subject to Subsection (32)(b), "dispense" means:
- 206 (i) drawing of an alcoholic product:
- 207 (A) from an area where it is stored; or
- 208 (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii),
209 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and
- 210 (ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of
211 the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the
212 retail licensee.
- 213 (b) The definition of "dispense" in this Subsection (32) applies only to:
- 214 (i) a full-service restaurant license;
- 215 (ii) a limited-service restaurant license;
- 216 (iii) a reception center license; and
- 217 (iv) a beer-only restaurant license.
- 218 (33) "Distillery manufacturing license" means a license issued in accordance with

219 Chapter 11, Part 4, Distillery Manufacturing License.

220 (34) "Distressed merchandise" means an alcoholic product in the possession of the
221 department that is saleable, but for some reason is unappealing to the public.

222 (35) "Educational facility" includes:

223 (a) a nursery school;

224 (b) an infant day care center; and

225 (c) a trade and technical school.

226 (36) "Equity club license" means a license issued in accordance with Chapter 5, Retail
227 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an
228 equity club license.

229 (37) "Event permit" means:

230 (a) a single event permit; or

231 (b) a temporary beer event permit.

232 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being
233 considered in determining the total number of a retail license that the commission may issue at
234 any time.

235 (39) (a) "Flavored malt beverage" means a beverage:

236 (i) that contains at least .5% alcohol by volume;

237 (ii) that is treated by processing, filtration, or another method of manufacture that is not
238 generally recognized as a traditional process in the production of a beer as described in 27
239 C.F.R. Sec. 25.55;

240 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop
241 extract; and

242 (iv) (A) for which the producer is required to file a formula for approval with the
243 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

244 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

245 (b) "Flavored malt beverage" is considered liquor for purposes of this title.

246 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,
247 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission
248 as a fraternal club license.

249 (41) "Full-service restaurant license" means a license issued in accordance with

250 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

251 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual
252 an alcoholic product, by sale or otherwise.

253 (b) "Furnish" includes to:

254 (i) serve;

255 (ii) deliver; or

256 (iii) otherwise make available.

257 (43) "Guest" means an individual who meets the requirements of Subsection
258 32B-6-407(9).

259 (44) "Health care practitioner" means:

260 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

261 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

262 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

263 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
264 Act;

265 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
266 Nurse Practice Act;

267 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
268 Practice Act;

269 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
270 Therapy Practice Act;

271 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

272 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
273 Professional Practice Act;

274 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

275 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
276 Practice Act;

277 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
278 Hygienist Practice Act; and

279 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

280 (45) (a) "Heavy beer" means a product that:

- 281 (i) contains more than 4% alcohol by volume; and
- 282 (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- 283 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 284 (46) "Hotel" is as defined by the commission by rule.
- 285 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,
- 286 Part 8, Identification Card Act.
- 287 (48) "Industry representative" means an individual who is compensated by salary,
- 288 commission, or other means for representing and selling an alcoholic product of a
- 289 manufacturer, supplier, or importer of liquor.
- 290 (49) "Industry representative sample" means liquor that is placed in the possession of
- 291 the department for testing, analysis, and sampling by a local industry representative on the
- 292 premises of the department to educate the local industry representative of the quality and
- 293 characteristics of the product.
- 294 (50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing
- 295 of an alcoholic product is prohibited by:
- 296 (a) law; or
- 297 (b) court order.
- 298 (51) "Intoxicated" means that a person:
- 299 (a) is significantly impaired as to the person's mental or physical functions as a result of
- 300 the use of:
- 301 (i) an alcoholic product;
- 302 (ii) a controlled substance;
- 303 (iii) a substance having the property of releasing toxic vapors; or
- 304 (iv) a combination of Subsections (51)(a)(i) through (iii); and
- 305 (b) exhibits plain and easily observed outward manifestations of behavior or physical
- 306 signs produced by the over consumption of an alcoholic product.
- 307 (52) "Investigator" means an individual who is:
- 308 (a) a department compliance officer; or
- 309 (b) a nondepartment enforcement officer.
- 310 (53) "Invitee" is as defined in Section 32B-8-102.
- 311 (54) "License" means:

- 312 (a) a retail license;
- 313 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
- 314 Licenses Act;
- 315 (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;
- 316 or
- 317 (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.
- 318 (55) "Licensee" means a person who holds a license.
- 319 (56) "Limited-service restaurant license" means a license issued in accordance with
- 320 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.
- 321 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other
- 322 than a bus or taxicab:
- 323 (a) in which the driver and a passenger are separated by a partition, glass, or other
- 324 barrier;
- 325 (b) that is provided by a business entity to one or more individuals at a fixed charge in
- 326 accordance with the business entity's tariff; and
- 327 (c) to give the one or more individuals the exclusive use of the limousine and a driver
- 328 to travel to one or more specified destinations.
- 329 (58) (a) (i) "Liquor" means a liquid that:
- 330 (A) is:
- 331 (I) alcohol;
- 332 (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- 333 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
- 334 (IV) other drink or drinkable liquid; and
- 335 (B) (I) contains at least .5% alcohol by volume; and
- 336 (II) is suitable to use for beverage purposes.
- 337 (ii) "Liquor" includes:
- 338 (A) heavy beer;
- 339 (B) wine; and
- 340 (C) a flavored malt beverage.
- 341 (b) "Liquor" does not include beer.
- 342 (59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

- 343 (60) "Liquor warehousing license" means a license that is issued:
344 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
345 (b) to a person, other than a licensed manufacturer, who engages in the importation for
346 storage, sale, or distribution of liquor regardless of amount.
- 347 (61) "Local authority" means:
348 (a) for premises that are located in an unincorporated area of a county, the governing
349 body of a county; or
350 (b) for premises that are located in an incorporated city or a town, the governing body
351 of the city or town.
- 352 (62) "Lounge or bar area" is as defined by rule made by the commission.
- 353 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
354 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 355 (64) "Member" means an individual who, after paying regular dues, has full privileges
356 in an equity club licensee or fraternal club licensee.
- 357 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
358 or homeport facility for a ship:
359 (i) (A) under the control of the United States Department of Defense; or
360 (B) of the National Guard;
361 (ii) that is located within the state; and
362 (iii) including a leased facility.
- 363 (b) "Military installation" does not include a facility used primarily for:
364 (i) civil works;
365 (ii) a rivers and harbors project; or
366 (iii) a flood control project.
- 367 (66) "Minor" means an individual under the age of 21 years.
- 368 (67) "Nondepartment enforcement agency" means an agency that:
369 (a) (i) is a state agency other than the department; or
370 (ii) is an agency of a county, city, or town; and
371 (b) has a responsibility to enforce one or more provisions of this title.
- 372 (68) "Nondepartment enforcement officer" means an individual who is:
373 (a) a peace officer, examiner, or investigator; and

374 (b) employed by a nondepartment enforcement agency.

375 (69) (a) "Off-premise beer retailer" means a beer retailer who is:

376 (i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local

377 Authority; and

378 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's

379 premises.

380 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.

381 (70) "On-premise banquet license" means a license issued in accordance with Chapter

382 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

383 (71) "On-premise beer retailer" means a beer retailer who is:

384 (a) authorized to sell, offer for sale, or furnish beer under a license issued in

385 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer

386 Retailer License; and

387 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's

388 premises:

389 (i) regardless of whether the beer retailer sells beer for consumption off the licensed

390 premises; and

391 (ii) on and after March 1, 2012, operating:

392 (A) as a tavern; or

393 (B) in a manner that meets the [recreational amenity] requirements of Subsection

394 32B-6-703(2)(e)(i).

395 (72) "Opaque" means impenetrable to sight.

396 (73) "Package agency" means a retail liquor location operated:

397 (a) under an agreement with the department; and

398 (b) by a person:

399 (i) other than the state; and

400 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package

401 Agency, to sell packaged liquor for consumption off the premises of the package agency.

402 (74) "Package agent" means a person who holds a package agency.

403 (75) "Patron" means an individual to whom food, beverages, or services are sold,

404 offered for sale, or furnished, or who consumes an alcoholic product including:

- 405 (a) a customer;
406 (b) a member;
407 (c) a guest;
408 (d) an attendee of a banquet or event;
409 (e) an individual who receives room service;
410 (f) a resident of a resort;
411 (g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102;
412 or
413 (h) an invitee.
- 414 (76) "Permittee" means a person issued a permit under:
415 (a) Chapter 9, Event Permit Act; or
416 (b) Chapter 10, Special Use Permit Act.
- 417 (77) "Person subject to administrative action" means:
418 (a) a licensee;
419 (b) a permittee;
420 (c) a manufacturer;
421 (d) a supplier;
422 (e) an importer;
423 (f) one of the following holding a certificate of approval:
424 (i) an out-of-state brewer;
425 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
426 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
427 (g) staff of:
428 (i) a person listed in Subsections (77)(a) through (f); or
429 (ii) a package agent.
- 430 (78) "Premises" means a building, enclosure, or room used in connection with the
431 storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product,
432 unless otherwise defined in this title or rules made by the commission.
- 433 (79) "Prescription" means an order issued by a health care practitioner when:
434 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
435 to prescribe a controlled substance, other drug, or device for medicinal purposes;

(b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(80) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(81) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(82) (a) "Public building" means a building or permanent structure that is:

- 467 (i) owned or leased by:
468 (A) the state; or
469 (B) a local government entity; and
470 (ii) used for:
471 (A) public education;
472 (B) transacting public business; or
473 (C) regularly conducting government activities.
- 474 (b) "Public building" does not include a building owned by the state or a local
475 government entity when the building is used by a person, in whole or in part, for a proprietary
476 function.
- 477 (83) "Public conveyance" means a conveyance to which the public or a portion of the
478 public has access to and a right to use for transportation, including an airline, railroad, bus,
479 boat, or other public conveyance.
- 480 (84) "Reception center" means a business that:
481 (a) operates facilities that are at least 5,000 square feet; and
482 (b) has as its primary purpose the leasing of the facilities described in Subsection
483 (84)(a) to a third party for the third party's event.
- 484 (85) "Reception center license" means a license issued in accordance with Chapter 5,
485 Retail License Act, and Chapter 6, Part 8, Reception Center License.
- 486 (86) (a) "Record" means information that is:
487 (i) inscribed on a tangible medium; or
488 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.
489 (b) "Record" includes:
490 (i) a book;
491 (ii) a book of account;
492 (iii) a paper;
493 (iv) a contract;
494 (v) an agreement;
495 (vi) a document; or
496 (vii) a recording in any medium.
- 497 (87) "Residence" means a person's principal place of abode within Utah.

- 498 (88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.
- 499 (89) "Resort" is as defined in Section 32B-8-102.
- 500 (90) "Resort facility" is as defined by the commission by rule.
- 501 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail
- 502 License Act, and Chapter 8, Resort License Act.
- 503 (92) "Restaurant" means a business location:
- 504 (a) at which a variety of foods are prepared;
- 505 (b) at which complete meals are served to the general public; and
- 506 (c) that is engaged primarily in serving meals to the general public.
- 507 (93) "Retail license" means one of the following licenses issued under this title:
- 508 (a) a full-service restaurant license;
- 509 (b) a limited-service restaurant license;
- 510 (c) a club license;
- 511 (d) an airport lounge license;
- 512 (e) an on-premise banquet license;
- 513 (f) an on-premise beer license;
- 514 (g) a reception center license; or
- 515 (h) a beer-only restaurant license.
- 516 (94) "Room service" means furnishing an alcoholic product to a person in a guest room
- 517 of a:
- 518 (a) hotel; or
- 519 (b) resort facility.
- 520 (95) "Serve" means to place an alcoholic product before an individual.
- 521 (96) (a) "School" means a building used primarily for the general education of minors.
- 522 (b) "School" does not include an educational facility.
- 523 (97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for
- 524 consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,
- 525 delivered for value, or by a means or under a pretext is promised or obtained, whether done by
- 526 a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules
- 527 made by the commission.
- 528 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity

529 appears at or performs:

530 (a) for the entertainment of one or more patrons;

531 (b) on the premises of:

532 (i) a social club licensee; or

533 (ii) a tavern;

534 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);

535 (d) on a contractual or voluntary basis; and

536 (e) whether or not the person is designated as:

537 (i) an employee;

538 (ii) an independent contractor;

539 (iii) an agent of the licensee; or

540 (iv) a different type of classification.

541 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,
542 Single Event Permit.

543 (100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
544 beer, heavy beer, and flavored malt beverages per year.

545 (101) "Social club license" means a license issued in accordance with Chapter 5, Retail
546 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
547 social club license.

548 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
549 Special Use Permit Act.

550 (103) (a) "Spirituous liquor" means liquor that is distilled.

551 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
552 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

553 (104) "Sports center" is as defined by the commission by rule.

554 (105) (a) "Staff" means an individual who engages in activity governed by this title:

555 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
556 holder;

557 (ii) at the request of the business, including a package agent, licensee, permittee, or
558 certificate holder; or

559 (iii) under the authority of the business, including a package agent, licensee, permittee,

560 or certificate holder.

561 (b) "Staff" includes:

562 (i) an officer;

563 (ii) a director;

564 (iii) an employee;

565 (iv) personnel management;

566 (v) an agent of the licensee, including a managing agent;

567 (vi) an operator; or

568 (vii) a representative.

569 (106) "State of nudity" means:

570 (a) the appearance of:

571 (i) the nipple or areola of a female human breast;

572 (ii) a human genital;

573 (iii) a human pubic area; or

574 (iv) a human anus; or

575 (b) a state of dress that fails to opaquely cover:

576 (i) the nipple or areola of a female human breast;

577 (ii) a human genital;

578 (iii) a human pubic area; or

579 (iv) a human anus.

580 (107) "State of seminudity" means a state of dress in which opaque clothing covers no
581 more than:

582 (a) the nipple and areola of the female human breast in a shape and color other than the
583 natural shape and color of the nipple and areola; and

584 (b) the human genitals, pubic area, and anus:

585 (i) with no less than the following at its widest point:

586 (A) four inches coverage width in the front of the human body; and

587 (B) five inches coverage width in the back of the human body; and

588 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

589 (108) (a) "State store" means a facility for the sale of packaged liquor:

590 (i) located on premises owned or leased by the state; and

591 (ii) operated by a state employee.

592 (b) "State store" does not include:

593 (i) a package agency;

594 (ii) a licensee; or

595 (iii) a permittee.

596 (109) (a) "Storage area" means an area on licensed premises where the licensee stores
597 an alcoholic product.

598 (b) "Store" means to place or maintain in a location an alcoholic product from which a
599 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in
600 Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or
601 32B-6-905(12)(b)(ii).

602 (110) "Sublicense" is as defined in Section 32B-8-102.

603 (111) "Supplier" means a person who sells an alcoholic product to the department.

604 (112) "Tavern" means an on-premise beer retailer who is:

605 (a) issued a license by the commission in accordance with Chapter 5, Retail License
606 Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

607 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,
608 On-premise Beer Retailer License.

609 (113) "Temporary beer event permit" means a permit issued in accordance with
610 Chapter 9, Part 4, Temporary Beer Event Permit.

611 (114) "Temporary domicile" means the principal place of abode within Utah of a
612 person who does not have a present intention to continue residency within Utah permanently or
613 indefinitely.

614 (115) "Translucent" means a substance that allows light to pass through, but does not
615 allow an object or person to be seen through the substance.

616 (116) "Unsaleable liquor merchandise" means a container that:

617 (a) is unsaleable because the container is:

618 (i) unlabeled;

619 (ii) leaky;

620 (iii) damaged;

621 (iv) difficult to open; or

- 622 (v) partly filled;
- 623 (b) (i) has faded labels or defective caps or corks;
- 624 (ii) has contents that are:
- 625 (A) cloudy;
- 626 (B) spoiled; or
- 627 (C) chemically determined to be impure; or
- 628 (iii) contains:
- 629 (A) sediment; or
- 630 (B) a foreign substance; or
- 631 (c) is otherwise considered by the department as unfit for sale.
- 632 (117) (a) "Wine" means an alcoholic product obtained by the fermentation of the
- 633 natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not
- 634 another ingredient is added.
- 635 (b) "Wine" is considered liquor for purposes of this title, except as otherwise provided
- 636 in this title.
- 637 (118) "Winery manufacturing license" means a license issued in accordance with
- 638 Chapter 11, Part 3, Winery Manufacturing License.
- 639 Section 2. Section **32B-2-209** is amended to read:
- 640 **32B-2-209. Prohibited interests, relationships, and actions.**
- 641 (1) As used in this section:
- 642 (a) "Applicable department employee" means a department employee who is:
- 643 (i) designated as a deputy or assistant director;
- 644 (ii) a chief administrative officer of a division within the department;
- 645 (iii) a department compliance officer; or
- 646 (iv) an employee directly performing licensing or compliance functions of the
- 647 department.
- 648 (b) "Immediate family" means an individual's:
- 649 (i) spouse; or
- 650 (ii) child who is younger than 18 years of age.
- 651 (c) "Permit" does not include:
- 652 (i) an industrial or manufacturing use permit;

653 (ii) a scientific or educational use permit; or

654 (iii) a religious wine use permit.

655 (2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and
656 Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable
657 department employee may not:

658 (a) have a pecuniary interest, whether as the holder of stock or other securities other
659 than a mutual fund, in a person who applies for or holds a package agency, license, or permit[
660 ~~or certificate~~] under this title;

661 (b) otherwise have a conflict of interest with a person who applies for or holds a
662 package agency, license, or permit[~~or certificate~~] under this title;

663 (c) have an office, position, or relationship, or be engaged in a business or avocation
664 that interferes or is incompatible with the effective and objective fulfillment of the duties of
665 office or employment;

666 (d) have a direct business relationship with a person subject to administrative action
667 under this title;

668 (e) accept a gift, gratuity, emolument, or employment from:

669 (i) a person who applies for or holds a package agency, license, or permit[~~or~~
670 ~~certificate~~] under this title; or

671 (ii) an officer, agent, or employee of a person who applies for or holds a package
672 agency, license, or permit[~~or certificate~~] under this title, except that a commissioner, the
673 director, or an applicable department employee may accept a gift from an officer, agent, or
674 employee if the gift is equal to or less than \$50; or

675 (f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
676 any person to any office or employment with a person who applies for or holds a package
677 agency, license, or permit[~~or certificate~~] under this title.

678 (3) An immediate family member of a commissioner, the director, or an applicable
679 department employee may not:

680 (a) have a pecuniary interest, whether as the holder of stock or other securities other
681 than a mutual fund, in a person who applies for or holds a package agency, license, or permit[
682 ~~or certificate~~] under this title;

683 (b) otherwise have a conflict of interest with a person who applies for or holds a

684 package agency, license, or permit~~[, or certificate]~~ under this title;

685 (c) have an office, position, or relationship, or be engaged in a business or avocation
686 that interferes or is incompatible with the effective and objective fulfillment of the duties of
687 office or employment of the commissioner, director, or applicable department employee for
688 whom the person is immediate family;

689 (d) accept a gift, gratuity, emolument, or employment from:

690 (i) a person who applies for or holds a package agency, license, or permit~~[, or~~
691 ~~certificate]~~ under this title; or

692 (ii) an officer, agent, or employee of a person who applies for or holds a package
693 agency, license, or permit~~[, or certificate]~~ under this title, except that an immediate family
694 member may accept a gift from an officer, agent, or employee if the gift is equal to or less than
695 \$50; or

696 (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
697 any person to any office or employment with a person who applies for or holds a package
698 agency, license, or permit~~[, or certificate]~~ under this title.

699 (4) An officer, agent, attorney, or employee of a person who applies for or holds a
700 package agency, license, or permit~~[, or certificate]~~ under this title may not directly or indirectly
701 solicit, request, or recommend to the governor, any state senator, the commission, or the
702 department the appointment of any person:

703 (a) as a commissioner;

704 (b) as director of the department; or

705 (c) to a department staff position.

706 (5) (a) A commissioner shall disclose during a meeting of the commission a potential
707 violation of this section, including the existence and nature of a professional, financial,
708 business, or personal interest with a person who holds, or an applicant for, a package agency,
709 license, or permit~~[, or certificate]~~ issued under this title that may result in a violation of this
710 section.

711 (b) After a commissioner makes a disclosure under Subsection (5)(a):

712 (i) the commission may, by motion, determine whether there is a potential violation of
713 this section;

714 (ii) if the commission determines that there is a potential violation of this section:

715 (A) the commission shall notify the governor; and
716 (B) the commissioner may not vote on any matter that would result in the potential
717 violation of this section; and
718 (iii) if the commission determines that there is not a potential violation of this section,
719 a commissioner may elect whether to vote on the issue that gives rise to the disclosure under
720 Subsection (5)(a).

721 (c) The commission shall record any declaration of a potential violation of this section
722 in the minutes of the meeting.

723 Section 3. Section **32B-2-605** is amended to read:

724 **32B-2-605. Operational requirements for package agency.**

725 (1) (a) A person may not operate a package agency until a package agency agreement is
726 entered into by the package agent and the department.

727 (b) A package agency agreement shall state the conditions of operation by which the
728 package agent and the department are bound.

729 (c) (i) If a package agent or staff of the package agent violates this title, rules under this
730 title, or the package agency agreement, the department may take any action against the package
731 agent that is allowed by the package agency agreement.

732 (ii) An action against a package agent is governed solely by its package agency
733 agreement and may include suspension or revocation of the package agency.

734 (iii) Notwithstanding that this part refers to "package agency" or "package agent," staff
735 of the package agency or package agent is subject to the same requirement or prohibition.

736 (2) (a) A package agency shall be operated by an individual who is either:

737 (i) the package agent; or

738 (ii) an individual designated by the package agent.

739 (b) An individual who is a designee under this Subsection (2) shall be:

740 (i) an employee of the package agent; and

741 (ii) responsible for the operation of the package agency.

742 (c) The conduct of the designee is attributable to the package agent.

743 (d) A package agent shall submit the name of the person operating the package agency
744 to the department for the department's approval.

745 (e) A package agent shall state the name and title of a designee on the application for a

746 package agency.

747 (f) A package agent shall:

748 (i) inform the department of a proposed change in the individual designated to operate
749 a package agency; and

750 (ii) receive prior approval from the department before implementing the change
751 described in this Subsection (2)(f).

752 (g) Failure to comply with the requirements of this Subsection (2) may result in the
753 immediate termination of a package agency agreement.

754 (3) (a) A package agent shall display in a prominent place in the package agency the
755 record issued by the commission that designates the package agency.

756 (b) A package agent that displays or stores liquor at a location visible to the public
757 shall display in a prominent place in the package agency a sign in large letters that consists of
758 text in the following order:

759 (i) a header that reads: "WARNING";

760 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
761 can cause birth defects and permanent brain damage for the child.";

762 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
763 [insert most current toll-free number] with questions or for more information.";

764 (iv) a header that reads: "WARNING"; and

765 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
766 serious crime that is prosecuted aggressively in Utah."

767 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different
768 font style than the text described in Subsections (3)(b)(iv) and (v).

769 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
770 same font size.

771 (d) The Department of Health shall work with the commission and department to
772 facilitate consistency in the format of a sign required under this section.

773 (4) A package agency may not display liquor or a price list in a window or showcase
774 that is visible to passersby.

775 (5) (a) A package agency may not purchase liquor from a person except from the
776 department.

(b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.

(6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(7) A package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(8) A package agency may not sell, offer for sale, or furnish liquor to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(9) (a) A package agency may not employ a minor to handle liquor.

(b) (i) Staff of a package agency may not:

(A) consume an alcoholic product on the premises of a package agency; or

(B) allow any person to consume an alcoholic product on the premises of a package agency.

(ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

(10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without

808 commission approval.

809 (d) The notice required by Subsection (10)(a) shall include:

810 (i) the dates of closure or cessation of operation;

811 (ii) the reason for the closure or cessation of operation; and

812 (iii) the date on which the package agency will reopen or resume operation.

813 (e) Failure of a package agency to provide notice and to obtain department

814 authorization before closure or cessation of operation results in an automatic termination of the

815 package agency agreement effective immediately.

816 (f) Failure of a package agency to reopen or resume operation by the approved date

817 results in an automatic termination of the package agency agreement effective on that date.

818 (11) A package agency may not transfer its operations from one location to another

819 location without prior written approval of the commission.

820 (12) (a) A person, having been issued a package agency, may not sell, transfer, assign,

821 exchange, barter, give, or attempt in any way to dispose of the package agency to another

822 person, whether for monetary gain or not.

823 (b) A package agency has no monetary value for any type of disposition.

824 (13) (a) Subject to the other provisions of this Subsection (13):

825 (i) sale or delivery of liquor may not be made on or from the premises of a package

826 agency, and a package agency may not be kept open for the sale of liquor:

827 (A) on Sunday; or

828 (B) on a state or federal legal holiday.

829 (ii) Sale or delivery of liquor may be made on or from the premises of a package

830 agency, and a package agency may be open for the sale of liquor, only on a day and during

831 hours that the commission directs by rule or order.

832 (b) A package agency located at a manufacturing facility is not subject to Subsection

833 (13)(a) if:

834 (i) the package agency is located at a manufacturing facility licensed in accordance

835 with Chapter 11, Manufacturing and Related Licenses Act;

836 (ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing

837 and Related Licenses Act, holds:

838 (A) a full-service restaurant license;

- 839 (B) a limited-service restaurant license; [~~or~~]
840 (C) a beer-only restaurant license; or
841 (D) dining club license;
842 (iii) the restaurant or dining club is located at the manufacturing facility;
843 (iv) the restaurant or dining club sells an alcoholic product produced at the
844 manufacturing facility;
845 (v) the manufacturing facility:
846 (A) owns the restaurant or dining club; or
847 (B) operates the restaurant or dining club;
848 (vi) the package agency only sells an alcoholic product produced at the manufacturing
849 facility; and
850 (vii) the package agency's days and hours of sale are the same as the days and hours of
851 sale at the restaurant or dining club.
852 (c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if
853 the package agent that holds the package agency to sell liquor at the resort does not sell liquor
854 in a manner similar to a state store.
855 (ii) The commission may by rule define what constitutes a package agency that sells
856 liquor "in a manner similar to a state store."
857 (14) (a) Except to the extent authorized by commission rule, a minor may not be
858 admitted into, or be on the premises of a package agency unless accompanied by a person who
859 is:
860 (i) 21 years of age or older; and
861 (ii) the minor's parent, legal guardian, or spouse.
862 (b) A package agent or staff of a package agency that has reason to believe that a
863 person who is on the premises of a package agency is under the age of 21 and is not
864 accompanied by a person described in Subsection (14)(a) may:
865 (i) ask the suspected minor for proof of age;
866 (ii) ask the person who accompanies the suspected minor for proof of age; and
867 (iii) ask the suspected minor or the person who accompanies the suspected minor for
868 proof of parental, guardianship, or spousal relationship.
869 (c) A package agent or staff of a package agency shall refuse to sell liquor to the

suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.

(b) A person may not open a sealed container on the premises of a package agency.

(c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:

(i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;

(ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

(iii) subject to:

(A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;

(B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; and

(C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.

(16) On or after October 1, 2011, a package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

(17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

(a) physical facilities;

(b) conditions of operation;

(c) hours of operation;

(d) inventory levels;

- (e) payment schedules;
- (f) methods of payment;
- (g) premises security; and
- (h) any other matter considered appropriate by the commission.

Section 4. Section **32B-6-404** is amended to read:

32B-6-404. Types of club license.

(1) To obtain an equity club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member; and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

(b) own, maintain, or operate a substantial recreational facility in conjunction with a club house such as:

(i) a golf course; or

(ii) a tennis facility;

(c) have at least 50% of the total membership having:

(i) full voting rights; and

(ii) an equal share of the equity of the club; and

(d) if there is more than one class of membership, have at least one class of membership that entitles each member in that class to:

(i) full voting rights; and

(ii) an equal share of the equity of the club.

(2) To obtain a fraternal club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

932 (ii) have members;

933 (iii) limit access to its licensed premises to a member or a guest of the member; and

934 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold

935 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

936 (b) have no capital stock;

937 (c) exist solely for:

938 (i) the benefit of its members and their beneficiaries; and

939 (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,

940 patriotic, or religious purpose for the benefit of its members or the public, carried on through

941 voluntary activity of its members in their local lodges;

942 (d) have a representative form of government;

943 (e) have a lodge system in which:

944 (i) there is a supreme governing body;

945 (ii) subordinate to the supreme governing body are local lodges, however designated,

946 into which individuals are admitted as members in accordance with the laws of the fraternal;

947 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at

948 least monthly; and

949 (iv) the local lodges regularly engage in one or more programs involving member

950 participation to implement the purposes of Subsection (2)(c); and

951 (f) own or lease a building or space in a building used for lodge activities.

952 (3) To obtain a dining club license, in addition to meeting the other requirements of

953 this part, a person shall:

954 (a) maintain at least the following percentages of its total club business from the sale of

955 food, not including mix for alcoholic products, or service charges:

956 (i) for a dining club license that is issued an original license on or after July 1, 2011,

957 60%; and

958 (ii) for a dining club license that is issued on or before June 30, 2011:

959 (A) 50% on or before June 30, 2012; and

960 (B) 60% on and after July 1, 2012; and

961 (b) obtain a determination by the commission that the person will operate as a dining

962 club licensee, as part of which the commission may consider:

- 963 (i) the square footage and seating capacity of the premises;
- 964 (ii) what portion of the square footage and seating capacity will be used for a dining
- 965 area in comparison to the portion that will be used as a lounge or bar area;
- 966 (iii) whether full meals including appetizers, main courses, and desserts are served;
- 967 (iv) whether the person will maintain adequate on-premise culinary facilities to prepare
- 968 full meals, except a person who is located on the premise of a hotel or resort facility may use
- 969 the culinary facilities of the hotel or resort facility;
- 970 (v) whether the entertainment provided at the club is suitable for minors; and
- 971 (vi) the club management's ability to manage and operate a dining club license
- 972 including:
- 973 (A) management experience;
- 974 (B) past dining club licensee or restaurant management experience; and
- 975 (C) the type of management scheme used by the dining club license.
- 976 (4) To obtain a social club license, a person is required to meet the requirements of this
- 977 part except those listed in Subsection (1), (2), or (3).
- 978 (5) (a) At the time that the commission issues a club license, the commission shall
- 979 designate the type of club license for which the person qualifies.
- 980 (b) If requested by a club licensee, the commission may approve a change in the type of
- 981 club license in accordance with rules made by the commission.
- 982 (6) To the extent not prohibited by law, this part does not prevent a dining club
- 983 licensee or social club licensee from restricting access to the club's licensed premises on the
- 984 basis of an individual:
- 985 (a) paying a fee; or
- 986 (b) agreeing to being on a list of individuals who have access to the club's licensed
- 987 premises.

988 Section 5. Section **32B-6-603 (Superseded 11/01/11)** is amended to read:

989 **32B-6-603 (Superseded 11/01/11). Commission's power to issue on-premise**

990 **banquet license -- Contracts as host.**

991 (1) (a) Before a person may store, sell, offer for sale, furnish, or allow the consumption

992 of an alcoholic product in connection with the person's banquet and room service activities at

993 one of the following, the person shall first obtain an on-premise banquet license in accordance

with this part:

- (i) a hotel;
- (ii) a resort facility;
- (iii) a sports center; or
- (iv) a convention center.

(b) This part does not prohibit an alcoholic product on the premises of a person listed in Subsection (1)(a) to the extent otherwise permitted by this title.

(c) This section does not prohibit a person who applies for an on-premise banquet license to also apply for a package agency if otherwise qualified.

(2) The commission may issue an on-premise banquet license to establish on-premise banquet licensees in the numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product at a banquet or as part of room service activities operated by an on-premise banquet licensee.

(3) Subject to Section 32B-1-201, the commission may not issue a total number of on-premise banquet licenses that at any time exceed the number determined by dividing the population of the state by 30,000.

(4) (a) As used in this Subsection (4), "grandfathered facility" means a facility:

- (i) for which the commission issued an on-premise banquet license that is in effect on May 11, 2009, on the basis that the facility is a convention center; and
- (ii) that no longer qualifies as a convention center as defined in Section 32B-1-102 solely because it is in total less than 30,000 square feet.

(b) Notwithstanding the definition of "convention center" in Section 32B-1-102, an on-premise banquet license applicable to a grandfathered facility may be renewed until October 31, 2011, if the on-premise banquet licensee is qualified for an on-premise banquet license except for the requirement that the facility be in total at least 30,000 square feet.

(c) Notwithstanding any other provision of this title, if a grandfathered facility is sold or otherwise transferred to a new owner, the commission shall allow the new owner to operate until October 31, 2011, under the on-premise banquet catering license issued to the grandfathered facility, if the new owner qualifies as an on-premise banquet licensee except for the requirement that the facility be in total at least 30,000 square feet.

(5) Pursuant to a contract between the host of a banquet and an on-premise banquet

1025 licensee:

1026 (a) the host of the banquet may request an on-premise banquet licensee to provide an
1027 alcoholic product served at the banquet; and

1028 (b) an on-premise banquet licensee may provide an alcoholic product served at the
1029 banquet.

1030 (6) At a banquet, an on-premise banquet licensee may furnish an alcoholic product:

1031 (a) without charge to a patron at a banquet, except that the host of the banquet shall pay
1032 for an alcoholic product furnished at the banquet; or

1033 (b) with a charge to a patron at the banquet.

1034 Section 6. Section **32B-6-702** is amended to read:

1035 **32B-6-702. Definitions.**

1036 As used in this part, "recreational amenity" is defined by the commission by rule made
1037 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made
1038 under this section shall define "recreational amenity" to be one or more of the following or an
1039 activity substantially similar to one of the following:

1040 (1) a billiard parlor;

1041 (2) a pool parlor;

1042 (3) a bowling facility;

1043 (4) a golf course;

1044 (5) miniature golf;

1045 (6) a golf driving range;

1046 (7) a tennis club;

1047 (8) a sports facility that hosts professional sporting events and has a seating capacity
1048 equal to or greater than 6,500;

1049 (9) a concert venue that has a seating capacity equal to or greater than 6,500;

1050 (10) one of the following if owned by a government agency:

1051 (a) a convention center;

1052 (b) a fair facility;

1053 (c) an equestrian park;

1054 (d) a theater; or

1055 (e) a concert venue;

- 1056 (11) an amusement park:
- 1057 (a) with one or more permanent amusement rides; and
- 1058 (b) located on at least 50 acres;
- 1059 (12) a ski resort; [or]
- 1060 (13) a venue for live entertainment if the venue:
- 1061 (a) is not regularly open for more than five hours on any day;
- 1062 (b) is operated so that food is available whenever beer is sold, offered for sale, or
- 1063 furnished at the venue; and
- 1064 (c) is operated so that no more than 15% of its total annual receipts are from the sale of
- 1065 beer[:]; or
- 1066 (14) concessions operated within the boundary of a park administered by the:
- 1067 (a) Division of Parks and Recreation; or
- 1068 (b) National Parks Service.
- 1069 Section 7. Section **32B-6-703** is amended to read:
- 1070 **32B-6-703. Commission's power to issue on-premise beer retailer license.**
- 1071 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
- 1072 beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise
- 1073 beer retailer license from the commission in accordance with this part.
- 1074 (2) (a) The commission may issue an on-premise beer retailer license to establish
- 1075 on-premise beer retailer licensed premises at places and in numbers as the commission
- 1076 considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on
- 1077 premises operated as an on-premise beer retailer.
- 1078 (b) At the time that the commission issues an on-premise beer retailer license, the
- 1079 commission shall designate whether the on-premise beer retailer is a tavern.
- 1080 (c) The commission may change its designation of whether an on-premise beer retailer
- 1081 is a tavern in accordance with rules made by the commission.
- 1082 (d) (i) In determining whether an on-premise beer retailer is a tavern, the commission
- 1083 shall determine whether the on-premise beer retailer will engage primarily in the retail sale of
- 1084 beer for consumption on the establishment's premises.
- 1085 (ii) In making a determination under this Subsection (2)(d), the commission shall
- 1086 consider:

- 1087 (A) whether the on-premise beer retailer will operate as one of the following:
- 1088 (I) a beer bar;
- 1089 (II) a parlor;
- 1090 (III) a lounge;
- 1091 (IV) a cabaret; or
- 1092 (V) a nightclub;
- 1093 (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):
- 1094 (I) whether the on-premise beer retailer will sell food in the establishment; and
- 1095 (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer
- 1096 will exceed the revenue of the sale of food;
- 1097 (C) whether full meals including appetizers, main courses, and desserts will be served;
- 1098 (D) the square footage and seating capacity of the premises;
- 1099 (E) what portion of the square footage and seating capacity will be used for a dining
- 1100 area in comparison to the portion that will be used as a lounge or bar area;
- 1101 (F) whether the person will maintain adequate on-premise culinary facilities to prepare
- 1102 full meals, except a person that is located on the premises of a hotel or resort facility may use
- 1103 the culinary facilities of the hotel or resort facility;
- 1104 (G) whether the entertainment provided on the premises of the beer retailer will be
- 1105 suitable for minors; and
- 1106 (H) the beer retailer management's ability to manage and operate an on-premise beer
- 1107 retailer license including:
- 1108 (I) management experience;
- 1109 (II) past beer retailer management experience; and
- 1110 (III) the type of management scheme that will be used by the beer retailer.
- 1111 (e) On or after March 1, 2012:
- 1112 (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:
- 1113 (A) maintain at least 70% of [its] the person's total gross revenues from business
- 1114 directly related to a recreational amenity on or directly adjoining the licensed premises of the
- 1115 beer retailer[-]; or
- 1116 (B) have a recreational amenity on or directly adjoining the licensed premises of the
- 1117 beer retailer and maintain at least 70% of the person's total gross revenues from the sale of

1118 food.

1119 (ii) The commission may not license a person as an on-premise beer retailer if the
1120 person does not:

1121 (A) meet the requirements of Subsection (2)(e)(i); or

1122 (B) operate as a tavern.

1123 (iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July
1124 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1,
1125 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an
1126 on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

1127 (B) If an on-premise beer retailer fails to notify the department as required by
1128 Subsection (2)(e)(~~+~~)(iii)(A), the on-premise beer retailer's license expires as of February 29,
1129 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise
1130 beer retailer is required to apply as a new licensee.

1131 (3) Subject to Section 32B-1-201:

1132 (a) The commission may not issue a total number of on-premise beer retailer licenses
1133 that are taverns that at any time exceeds the number determined by dividing the population of
1134 the state by 54,147.

1135 (b) The commission may issue a seasonal on-premise beer retailer license for a tavern
1136 in accordance with Section 32B-5-206.

1137 (4) (a) Unless otherwise provided in Subsection (4)(b):

1138 (i) only one on-premise beer retailer license is required for each building or resort
1139 facility owned or leased by the same person; and

1140 (ii) a separate license is not required for each retail beer dispensing location in the
1141 same building or on the same resort premises owned or operated by the same person.

1142 (b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the
1143 building or resort facility operates in the same manner.

1144 (ii) If each retail beer dispensing location does not operate in the same manner:

1145 (A) one on-premise beer retailer license designated as a tavern is required for the
1146 locations in the same building or on the same resort premises that operate as a tavern; and

1147 (B) one on-premise beer retailer license is required for the locations in the same
1148 building or on the same resort premises that do not operate as a tavern.

1149 Section 8. Section **32B-6-705** is amended to read:

1150 **32B-6-705. Specific licensing requirements for on-premise beer retailer license.**

1151 (1) To obtain an on-premise beer retailer license a person shall comply with Chapter 5,
1152 Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to carry
1153 dramshop insurance coverage in accordance with Section 32B-5-201 only if the on-premise
1154 beer retailer sells more than \$5,000 of beer annually.

1155 (2) (a) An on-premise beer retailer license expires on the last day of February each
1156 year.

1157 (b) To renew a person's on-premise beer retailer license, a person shall comply with the
1158 renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January
1159 31.

1160 (3) (a) The nonrefundable application fee for an on-premise beer retailer license is
1161 \$300.

1162 (b) (i) The initial license fee for an on-premise beer retailer license that is not a tavern
1163 is \$300.

1164 (ii) The initial license fee for an on-premise beer retailer license that is a tavern is
1165 \$1,500.

1166 (c) (i) The renewal fee for an on-premise beer retailer license that is not a tavern is
1167 \$350.

1168 (ii) The renewal fee for an on-premise beer retailer license that is a tavern is \$1,250.

1169 (4) The bond amount required for an on-premise beer retailer license is the penal sum
1170 of [~~\$2,000~~] \$5,000.

1171 (5) Notwithstanding the other provisions of this part, if an applicant is a state agency or
1172 political subdivision of the state it is not required to:

1173 (a) pay an application fee, initial license fee, or renewal fee;

1174 (b) obtain the written consent of the local authority;

1175 (c) submit a copy of the applicant's current business license; or

1176 (d) post a bond as specified by Section 32B-5-204.

1177 Section 9. Section **32B-6-706** is amended to read:

1178 **32B-6-706. Specific operational requirements for on-premise beer retailer license.**

1179 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational

1180 Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply
1181 with this section.

1182 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
1183 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

1184 (i) an on-premise beer retailer;

1185 (ii) individual staff of an on-premise beer retailer; or

1186 (iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

1187 (2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make
1188 and maintain the records the department requires.

1189 (b) Section 32B-1-205 applies to a record required to be made or maintained in
1190 accordance with this Subsection (2).

1191 (3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or
1192 sell liquor on its licensed premises.

1193 (4) Beer sold in a sealed container by an on-premise beer retailer may be removed from
1194 the on-premise beer retailer premises in the sealed container.

1195 ~~[(5) Only an on-premise beer retailer that operates as a tavern is subject to Section~~
1196 ~~32B-5-309.]~~

1197 ~~[(6)]~~ (5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at
1198 its licensed premises during a period that:

1199 (i) begins at 1 a.m.; and

1200 (ii) ends at 9:59 a.m.

1201 (b) (i) Notwithstanding Subsection ~~[(6)]~~ (5)(a), a tavern shall remain open for one hour
1202 after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern
1203 may finish consuming a single serving of beer not exceeding 26 ounces.

1204 (ii) A tavern is not required to remain open:

1205 (A) after all patrons have vacated the premises; or

1206 (B) during an emergency.

1207 ~~[(7)]~~ (6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a
1208 tavern.

1209 ~~[(8)]~~ (7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the
1210 purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases

1211 from:

1212 (A) a beer wholesaler licensee; or

1213 (B) a small brewer that manufactures the beer.

1214 (ii) Violation of Subsection [~~(8)~~] (7)(a) is a class A misdemeanor.

1215 (b) (i) If an on-premise beer retailer purchases beer under this Subsection [~~(8)~~] (7) from
 1216 a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer
 1217 wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area
 1218 in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by
 1219 the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

1220 (ii) Violation of Subsection [~~(8)~~] (7)(b)(i) is a class B misdemeanor.

1221 (9) A tavern shall comply with Section 32B-1-407.

1222 Section 10. Section **32B-6-902 (Effective 03/01/12)** is amended to read:

1223 **32B-6-902 (Effective 03/01/12). Definitions.**

1224 (1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a
 1225 licensed premises of a beer-only restaurant licensee that:

1226 (i) as of January 1, 2011:

1227 (A) is operational; and

1228 (B) has facilities for the dispensing or storage of an alcoholic product that do not meet
 1229 the requirements of Subsection 32B-6-905(12)(a)(ii);

1230 (ii) is not operational as of January 1, 2011, if a person applying for the beer-only
 1231 restaurant license:

1232 (A) has as of January 1, 2011, a building permit to construct the restaurant;

1233 (B) is as of January 1, 2011, actively engaged in the construction of the restaurant, as
 1234 defined by rule made by the commission;

1235 (C) is issued the beer-only license by no later than [~~December 31, 2011~~] March 1,
 1236 2012; and

1237 (D) once constructed, will have a bar structure that does not meet the requirements of
 1238 Subsection 32B-6-905(12)(a)(ii); or

1239 (iii) is a bar structure grandfathered under Section 32B-6-409.

1240 (b) "Grandfathered bar structure" does not include a grandfathered bar structure
 1241 described in Subsection (1)(a) on or after the day on which a restaurant remodels the

1242 grandfathered bar structure, as defined by rule made by the commission.

1243 (2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered
1244 bar structure notwithstanding whether a restaurant undergoes a change of ownership.

1245 Section 11. **Effective date -- Retrospective operation.**

1246 (1) If approved by two-thirds of all the members elected to each house, this bill takes
1247 effect upon approval by the governor, or the day following the constitutional time limit of Utah
1248 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1249 the date of veto override, except that the amendments to Section 32B-6-902 (Effective
1250 03/01/12) in this bill take effect on March 1, 2012.

1251 (2) The amendments in this bill have retrospective operation to July 1, 2011 except for
1252 the amendments to Section 32B-6-902 (Effective 03/01/12).